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ABSTRACT

Federal legislation and litigation concerning the rights of handicapped and limited-English-proficient (LEP) students is reviewed, and the dilemma of providing fair, accurate, and adequate assessment for LEP students considered for special education is examined. A recent shift from overrepresentation of LEP students in special education to an underrepresentation of this group, because of fear of not being able to provide non-biased assessment, is discussed. Ways of dealing with the dilemma are explored, with emphasis on the need for a more nontraditional, multifaceted approach to assessment and a willingness to use all available resources. (MSE)

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Assessing Limited English Proficient Students for Special Education

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Mary Beth Ryan

This article reviews legislation and litigation concerning the rights of handicapped and LEP students, and examines the dilemma of providing fair, accurate, and adequate assessment for LEP students being considered for special education. The article also identifies a recent shift from overrepresentation of LEP students in special education to underrepresentation because of fear on the part of school systems of not being able to provide nonbiased assessment. Finally, this article explores various ways of dealing with the dilemma, emphasizing the need for a more nontraditional, multifaceted approach to assessment and for a willingness to use all available resources.

Assessing limited English proficient (LEP) students for special education is a complicated and controversial issue, one that has been the subject of federal and state legislation as well as landmark court decisions.

HISTORICAL PERSPECTIVE

Two pieces of legislation that affect the education of all handicapped children are Section 504 of the Vocational Rehabilitation Act of 1973 and the Education of All Handicapped Children Act of 1975—Public Law 94-142.

Section 504 of the Vocational Rehabilitation Act of 1973 mandates that:

> No otherwise qualified handicapped individual in the United States shall, solely by the reason of his (her) handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under programs or

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activities receiving federal financial assistance. (quoted in National Clearinghouse for Bilingual Education, [NCBE] 1984, p. 3)

This civil rights mandate did not appropriate any funds for implementation of its regulations, but specified that "federal funds going to either a state or local education agency can be cut off should it be determined that they are in violation of compliance with the Act. All handicapped persons, regardless of age, are covered under the Act" (NCBE, 1984, p. 3).

Public Law 94-142 mandated the following for all handicapped children aged 3-21:

> It is the purpose of this act to assure that all handicapped children have available to them a free appropriate education and related services designed to meet their unique needs; to assure that the rights of handicapped children and their parents or guardians are protected; to assist states and localities to provide for the education of all handicapped children; and to assess and assure the effectiveness of efforts to educate handicapped children. (quoted in NCBE, 1984, p. 3)

This law did authorize funds, which are "made available to eligible states on a formula basis with subsequent flow through to the local education agencies (LEAs)" (NCBE, 198, p. 3).

Although neither law made specific mention of the responsibilities of educators to minority language populations, the federal regulations clearly stated that "testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory" (Minsky, 1980, p. 5). In addition, the minimum mandatory requirements for evaluation addressed in Section 121a, 532, Evaluation Procedures, specified that materials and procedures:

> (1) Are provided and administered in the child's native language or other mode of communication unless it is clearly not feasible to do so;
> (2) Have been validated for the specific purpose for which they are used; and
> (3) Are administered by trained personnel in conference with the instructions provided by their producer;
> (b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;
> (c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);
> (d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child; and

(c) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (quoted by Minsky, 1980, pp. 5-6)

Fineman and Ross reviewed the litigation and studies interpreting the legislation as follows:

> Recent years have seen numerous litigations based on language bias of test instruments which have been used to place children. The cases include: Arreola v. Santa Ana Board of Education, Diana v. California Board of Education, and Covarubias v. San Diego Unified School District (C.O.R.R.C., 1977). Most of the litigation is concerned with the fact that bilingual students are not represented in the normative samples of diagnostic tests (Sattler, 1974).
>
> A test is only valid to the extent that the items of the test are as common to each child tested as they were to the children upon whom the norms were based (Sanchez, 1934, p. 766).
>
> Mercer (1971) found that in California approximately 75 percent of the children in special education classes for the retarded would not have been placed if ethnic, language, and sociocultural data had been taken into account. Similar placement descrepancies involving bilingual students have been found by other studies (Cohen, 1966; McGrath, 1972; Williams, 1968).
>
> Bryen (1976) found that psycholinguistic tests, normed in English, overidentified Spanish-speaking students and stated: "many speakers of . . . Spanish face the result of being judged intellectually and linguistically inferior . . . since there are no adequate measures to assess the child's understanding of his own language." (Fineman & Ross, 1980, pp. 2-3)

THE DILEMMA

School systems, especially those that have LEP students who cover a wide spectrum of languages and cultures, are faced with a serious problem: to provide nonbiased assessment in the child's dominant language for all of these children. Although the litigation and studies referred to above showed an overrepresentation of LEP students in special education, some recent studies indicate that currently there is an *under*representation of these students in special education. "While Blacks in Montgomery County tend to be overrepresented in special education programs, Asians and Hispanics are underrepresented. In light of the crisis situations from which many of the recent LEP enrollees have come, this is a cause for concern" (Towers, 1981, p. 5).

There seem to be three reasons for this recent shift in statistics. The first stems from characteristics of the children themselves. "The specific kinds of problems to be dealt with here tend to

revolve around . . . the inappropriate lack of referral of LEP children who may indeed have a bona fide handicapping condition but who are so quiet and unobtrusive that no one notices them" (Towers, 1981, pp. 10-11). The second emanates from characteristics of the child's parents. "In many cultures, there is a reticence on the part of parents to discuss what may be considered a disgrace or a shame and what in their own country is probably not something with which the government is prepared to help" (Towers, 1981, p. 12). The third seems to be due to a reluctance on the part of school personnel to administer an assessment battery that might be in violation of 20 USC 1412(5), which states: "too often LEP students . . . may not be receiving needed services to deal with a bona fide handicapping condition simply because school officials do not feel capable of properly identifying and documenting such conditions" (Towers, 1981, p. 1). However, it is important to note that this reluctance could itself result in a violation of Public Law 94-142, which mandates free appropriate public and related services to *all* handicapped children aged 3-21. "*Difference* can not be accepted automatically as *deviance*. Educators at all levels must be led to examine their personal attitudes towards difference. On the other hand, actual deviance must not be masked by cultural, racial or linguistic difference (Sennett, 1981, p. 2).

DEALING WITH THE DILEMMA

As educators, we cannot let this dilemma paralyze us if we truly have in mind the best interests of the students. While working toward the ideal, we must use our present resources with as many precautions against bias as possible. "About the best that we can do is to move towards a system of 'least-biased assessment' in which many safeguards are present to assure that cultural differences neither mask real deviance nor are mistaken for deviance" (Sennett, 1981, p. 32). What follows is a discussion of possible strategies to achieve this goal.

STEPS BEFORE SCREENING

Indiscriminate referral of LEP students to special education can be avoided by proper teacher education. Teachers of LEP students need to be sensitive to differences in linguistic characteristics, value systems, learning modalities, and socioeconomic status of their students (NCBE, 1984, pp. 39-41). They should also allow

their students time for initial adjustment before making any judgments on behavior or performance.

> Care should be taken to give at least a 2 or 3 month settling in period for new refugees, entrants from other countries, and kindergarten or first grade entrants from non-English-speaking households before referrals are initiated. Exceptions for this should be made for students who fail hearing or vision screenings or who show evidence of severe handicapping conditions which would not permit placement in regular programs. (Marshall, 1981, p. 12)

If, after this settling-in period, the teacher sees little or no improvement, she should make structured observations of the child's behavior and performance in order to obtain objective data. "The necessity for specific descriptive samples of behavior, rather than opinion statements or global assessments of a child's functioning, should minimize the biasing impact of language, culture, and socioeconomic status discussed earlier" (NCBE, 1984, p. 42).

Teachers should also be able to show that they have modified the instructional program for the student with little or no success. All resources available in the building should be tapped first before referring the child for special education.

> It is expected that each school will routinely utilize available support services such as psychologists, visiting teachers, counselors, remedial reading, bilingual programs and other curriculum support personnel as a means of accommodating varying student needs. Teachers and principals will call on such services when modification of the learning environment is indicated for any individual or group of students. (Freeman and Ross, 1980, p. 6)

ASSESSMENT CONSIDERATIONS

The ideal method of assessment is testing in the student's dominant language using culture-fair test instruments. This method required a bilingual psychologist who administers, in the student's native language, a test that has been normed on that population. This type of assessment is sometimes possible, most often in the case of Spanish-speaking children. When there is no bilingual psychologist on the staff, an outside psychologist may be procured on a per-diem basis. However, even in this ideal situation there are certain precautions to be taken.

First, school personnel must be careful in assuming that the child's native language is his or her dominant language. This assumption may be true for activities around the home but not necessarily for academic tasks, especially if the student had little or no schooling before coming to the United States.

> Some students may have basic information in the home language but perform more proficiently in English in academic areas. Evaluation in both languages can often be a useful diagnostic tool. Language dominance and English language proficiency information should be a standard part of the referral packet for all students from non-English backgrounds. (Marshall, 1981, p. 12)

Second, one cannot assume that a test in the child's native language is therefore normed on the appropriate population. Norms for Mexican-American students may be quite different from those for Puerto Ricans or Nicaraguans, even though they share a common language (Towers, 1981, p. 15). Such discrepancies have led some school systems to establish their own local norms. This solution, too, has been the subject of controversy.

> Some professionals claim that many low income and minority children are constrained by a system that keeps judging their performance in light of norms of the dominant culture, and that the use of special group or regional norms allows comparison of the child to other children who have had similar opportunities and experiences. Professionals on the other side of the controversy claim that a useful standardization sample is drawn from different regions in the United States and is stratified by age, sex, socio-economic status, and racial-ethnic groups in the same proportion as that in which these groups appear in society. These professionals feel that local and special group norms are, in the end, provincial. Although the practice of using local or special norms sounds progressive and humanitarian, it actually works against the child's mobility. The end result of comparing a child to special and local norm groups is that of confining him in those groups. (Bailey, 1980, pp. 593-594)

One alternative when a bilingual psychologist is not available is the use of an interpreter. Here, too, special precautions should be taken. In selecting an interpreter, educators should take into account the person's background and educational experiences. College graduates are preferred. The interpreter must also be proficiently bilingual so that she or he can communicate with the examiner in English and understand the test instrument. In situations where few qualified persons are available, cooperative arrangements can be made on a regional basis to share the qualified interpreter among school districts (Marshall, 1981, pp. 17-18).

It is also important to train the interpreter in how to function in the test situation. Training needs may vary based on the person's background and experience but may include:

a. The importance of standardized procedures and wording.
b. The importance of rapport with the student.
c. Avoidance of nonverbal cues to the student.

d. Having the trainee take the tests that he/she will be required to translate. This should be followed by discussion of potentially biased items or items which may not translate appropriately into the language involved.
e. Having the trainee develop a list of difficult terms to be translated for each test so that translations will be standardized for all students.
f. Having two or more trainees of the same language translate to each other, correct inappropriate wording and standardize their administration techniques and terminology. (Marshall, 1981, p. 18)

In instances where the preferred test instrument is not available in the child's dominant language, some school systems have gone to the trouble and expense of having a test translated in order to meet federal standards. Although this seems admirable, it, too, can present problems.

> Numerous tests have been directly translated into other languages, especially Spanish. Often little consideration has been given to the relative item difficulty in the other language. As one example, *edifico* is plate number 126 on the Peabody Picture Vocabulary Test (PPVT) in English. When translated into Spanish as *edificio* it becomes the common word generally used for *building*. Its item difficulty has been severely decreased. Translations of reading, spelling and vocabulary tests suffer most greatly from this problem. The practice of direct translation is to be discouraged and the examiner should look with caution on any test which has been translated without adequate field testing and norming of the translated test. Good standardization can go a long way toward uncovering biased items, poor translation, and necessary item modifications. To do this job adequately requires much more time and effort than is involved with mere translation. (Marshall, 1981, p. 19)

The alternative to the use of a translated test, then, seems to be the use of a nonverbal test, using an interpreter to explain directions. Educators must be aware, however, that using such a test instrument can still involve an element of bias—that of time. Most of these instruments are timed and normed accordingly. However, students from many cultures, especially the Indochinese, do not function well under time constraints, inasmuch as their culture values quality of work over speed. The examiner must make a judgment whether to enforce the time limits, thereby penalizing the student, or to lift the time restraints, thereby interfering with the standardized procedures.

In situations where a bilingual psychologist is not available, the examiner must be prepared to take extraordinary measures to establish rapport with the student being tested.

> Rapport, for example, is critically important for testing situations. . . . Where the examiner and examinee belong to different cultural groups or speak different languages, large differences may be expected. With little perceived commonality on the part of either examiner or examinee, rapport may be difficult or even impossible to establish. The whole situation is often further complicated by the presence of test anxiety. Children referred for testing in most school systems are already exceptional in some respect, usually experiencing failure in one or more areas. Test situations in general, and one-on-one testing situations with an unfamiliar adult who is probably different culturally, racially or linguistically in particular may provoke extreme anxiety in the child. Unless the examiner is aware of this the child may appear to be handicapped or more severely handicapped than he she really is, rather than anxious. True exceptionalities may remain hidden by an anxiety causing overall poor performance. (Fineman & Ross, 1980, pp. 13-14)

RECOMMENDATIONS

The various ways of dealing with the dilemma discussed above seem to be fraught with problems and special considerations. At present, there seems to be no way to assess an LEP student for special education that allows one the satisfaction of knowing for certain that federal regulations have been met. Here, again, we must not allow ourselves to be paralyzed by the situation, leaving children with special needs without the appropriate education that is their right. Professional judgment must be used in striving for the least-biased assessment available.

Probably the best way to ensure the least-biased assessment is to use a truly multifaceted approach—one that does not rely so heavily on a single test that may have questionable validity and reliability for LEP students. This approach is likely to require a new mind-set on the part of most school psychologists, but it is crucial if we are to yield an evaluation that we can live with in conscience.

One method of achieving a multifaceted evaluation that has gained respect in recent years is the **SOMPA** (System of Multipluralistic Assessment), a diagnostic system developed by J. R. Mercer and J. F. Lewis. This is a procedure (not a test) based on a three-part model:

(1) the medical clinical model, designed to answer questions about the pathological state of the organism;
(2) the social system model, designed to answer questions about the behavior of an individual within his social setting; and
(3) the pluralistic or general intelligence model, which attempts to answer questions about the individual's mental

ability or potential for learning (Mercer & Lewis, 1978, pp. 50-60).

The Dade County Public School System in Miami, Florida, uses a six-part model that includes assessment in the following areas: intellectual, academic, adaptive behavior, process, speech, and personality (Marshall, 1981, pp. 19-34).

The Brockton (Massachusetts) Public School System uses the Brockton Battery, which they developed, or other appropriate bilingual tests to determine the following:

> (a) the student's proficiency in his native language as well as in English; (b) if a difference exists between the student's expressive language and receptive language abilities in both languages; (c) whether or not the student demonstrates a lack of adaptive behavior in the home or in school; (d) the appropriateness of his cognitive abilities to learn in English; (e) how the student best "receives, retains, processes and expresses" information in his native language as well as in English. (Sennott, 1981, p. 14)

Being open to the inclusion of assessment measures other than norm-referenced tests may be the key to an evaluation about which we can feel satisfied. One such measure is the criterion-referenced test.

> A number of professionals have argued that increased use of criterion-referenced tests in the evaluation process would force decision makers to focus on the specific educational needs of children, as opposed to focusing on the labeling process. (A criterion-referenced measure compares a child's performance with some standard of mastery, whereas a norm referenced measure compares a child's performance with that of other children.) This practice should facilitate nondiscriminatory decision making because the process then becomes one of (a) identifying basic skills that most children are expected to achieve, (b) assessing all children to determine which of these skills are present, and (c) designing appropriate instructional strategies to teach the remaining skills. (Bailey, 1980, p. 593)

Though this seems to be a sound and useful approach to identifying deficiencies, it does have certain problems. "First, the current status of state and federal laws and funding systems necessitates a continuation of the labeling process. To suggest that school systems ignore mandatory guidelines for classification and placement of children would be unwise. Second, even if school systems were free to adopt a criterion-referenced approach to evaluation, this would not necessarily insure nondiscriminatory decision making. Many of the discriminatory aspects of norm-referenced measures, such as wording or content can be found in criterion-referenced measures as well" according to Bailey (1980, p. 593). Despite these problems, these tests have a

definite contribution to make to the evaluation process. According to Bailey:

> Criterion-referenced measures, however, can be extremely useful in making appropriate educational decisions. They can also fulfill the mandates for nondiscriminatory assessment when the following conditions are met:
>
> 1. The importance of the skills measured by the instrument and taught in the curriculum are agreed upon by culturally diverse groups within the school system.
> 2. Criterion-referenced items are constructed so as not to measure the skills of children from a particular cultural group unfairly.
> 3. Alternative instructional strategies are incorporated to meet the learning needs of individual children. (Bailey, 1980, p. 593)

The answer? Use criterion-referenced tests *in addition to* the norm-referenced tests usually included in evaluations.

> For a long time information from criterion-referenced devices was considered inadequate for making placement decisions. Actually, they provide information that is crucial in determining the program that best meets a child's educational needs. Both criterion-referenced and norm-referenced tests should be considered before making an educational decision, because each provides a perspective that the other does not. Decision makers should incorporate information from a wide range of sources before making significant placement decisions. (Bailey, 1980, p. 593)

Another measure whose value assessment teams must be open to recognizing is the structured observation using checklists of observable behaviors. Many school systems have developed these checklists as a means of providing evidence of specific behaviors symptomatic of special learning problems. There is even a formal instrument developed by Meier, Cazier, and Giles called the Individual Learning Disabilities Classroom Screening Instrument that can be used for this purpose. These checklists tend to be very thorough, can be completed by the classroom teacher, and provide very useful information.

Tam Dang Wei, a Vietnamese psychologist for the Illinois schools, recommends the use of clinical observations for Vietnamese students. Though she does not appear to use behavior checklists, she is careful to take notes on concrete, observed behaviors.

> The student is followed throughout the school day. Attempt is made to observe the child in as many types of classroom activities as possible. This should include some academic work (math, reading, class discussion), some physical activities (PE., recess, art), and some special classes (ESL, speech, special reading, math, language development, library . . .). Physical education and recess are most appropriate times to asess the child's motor coordination and also to observe his/her interaction with the peer group. Special classes

> are observed in order to evaluate the types of services that the local schools provide in order to coordinate any further services that he she may need (quoted in Eineman & Ross, 1980, p. 10)

Though this is a time-consuming process, its contribution to a sound and thorough assessment seems invaluable.

Information from educational tests can also be very helpful if considered along with other assessment data. "The teacher's test results can provide objective data needed to justify referral. Tests should be used for diagnostic-prescriptive purposes, that is, assessment of a child's strengths and weaknesses relative to instructional goals" (NCBE, 1984, p. 43).

Parental input must be sought out and valued as well, if one is to have a truly multifaceted assessment. This is another instance where a bilingual team member or interpreter is needed, not only because of language differences but because of cultural differences and rapport as well.

> The role of this team in working with the parents of LEP children in particular is significant. Often times the best source of information about a child is the parent. Because of the language barrier and more frequently the cultural barrier, LEP parents are not anxious to share problem situations with school officials. This can and often has led to not only incomplete school records but faulty ones. While MCPS (Montgomery County Public Schools) referral, assessment, and placement procedures emphasize working with the parents of handicapped children, monolingual staff have not always been successful in this activity. (Towers, 1981, p. 12)

One strategy that can simplify and lend consistency to the evaluation is to have one (or more than one in a very large school system) assessment team that takes all LEP referrals for special education. Montgomery County Public Schools and Dade County Public Schools have formed bilingual assessment teams for this purpose. "A differential diagnostic procedure which would be administered by a team consisting of bilingual special educators and bilingual members of the Guidance Staff and Bilingual department teachers was decided upon" (Sennett, 1981, p. 22).

If a bilingual assessment team is not feasible because of a lack of qualified bilingual staff members or the number of foreign languages represented in the population, a mobile assessment team can still be formed to evaluate all LEP special education referrals, and a list of trained interpreters can be kept on call. In this way, rather than trying to educate and sensitize all assessment personnel throughout the system, efforts can be concentrated on a few selected individuals. "This approach of a multidisciplinary centralized mobile team has much to recom-

mend it over other approaches such as training existing psychologists and special education diagnosticians on a decentralized basis" (Towers, 1981, p. 13).

All of these recommendations necessitate the formation of one crucial element that must be present in our work it if is to benefit the child, and that is an attitude of openness and cooperation between special education personnel and ESL personnel. As one who has taught both special education and ESL, my experience is that the two departments have much in common and a great deal to give to each other. Cooperation between the two can bring about mutual enrichment, understanding, and sensitization as well as the good of the child. This spirit of cooperation must cut through central office and departmental politics, and a tendency to guard one's own "sacred" territory, in order to allow staff members to deal with the issues honestly and openly. According to Sennett (1981), these issues as we see them seem to boil down to (1) Who has the perceived time and capability for individualized teaching, (2) Who has the necessary staff, and (3) Who has the money to develop or to buy new programs? A fourth, more subtle, issue might also be: Who is receiving the political and statutory pressure? In economically restrictive times, these questions are critical to the process and very often become the hidden agendas of local school systems (p. 25).

Amidst all the controversy and concerns we must not lose sight of the purpose that calls us together in the first place: deciding the most appropriate program of services for each child. While this goal probably served as a major impetus for the movement toward nondiscriminatory evaluation, it has since taken a secondary role as professionals have focused on attempts to establish equality in testing. Little has been done to assess the impact of these procedures on the quality of the services children receive. "Children are not usually referred for evaluation on a teacher's whim. A referral indicates a significant educational problem that is unlikely to be remedied without some form of additional intervention with the teacher or child. It is the responsibility of the evaluation team to insure that the need for intervention is adequately documented and to determine the service approach that best meets the child's needs" (Bailey, 1980, p. 595).

The child's needs. Isn't that what we're all about? We must lead the child, using the best means at our disposal, toward the fulfillment of the ultimate goal of public education: "a child who

can compete successfully within American society. The question of which language should be used for teaching is really a moot question. It is more important to use everything within our arsenal and repertoire of educational skills to bring the child to this point. Anything else does violence to everything we know about education" (Sennett, 1981, p. 33).

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